IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2018 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 & 3 to 5 No.
No. 2 Yes.

MANJIBHAI SHAMJIBHAI

Versus

NATRAJ THEATRE & OTHERS

Appearance:

MR HB SHAH for Petitioner
MR VC DESAI for Respondent No. 1
MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/03/99

ORAL JUDGEMENT

This revision under section 29(2) of the Bombay Rent Control Act,1947 has been filed by the revisionist-defendant no.2 challenging concurrent finding of the two courts below treating him sub-tenant of the defendant no.1 - respondent no.2 of this Civil Revision

Application.

The brief facts are that Natraj Theatre respondent no.1 is the owner and landlord of the disputed premises consisting of stall, some open space and room. It was let out to Gujarat Bottling Company Private Limited - defendant no.1. The allegation of the plaintiff - respondent no.1 was that respondent no.2 had illegally sublet, assigned or transferred in any manner the disputed accommodation to the revisionist-defendant no.2 and on this count the eviction of the tenant in chief as well as subtenant was sought. In addition to this, eviction was also sought on the ground that the tenant in chief was in arrears of rent for more than six months and he did not pay the same within a month of service of notice of demand.

The case of the defendant no.2 in the trial Court was that he is not subtenant nor the disputed premises has been assigned or transferred to him by the tenant in chief, rather, he is licensee from the owner landlord. It appears that during the pendency of the suit pursish exhibit 20 was given by the tenant in chief stating therein that he had sublet the suit premises to the defendant no.2 viz. the revisionist.

The parties adduced evidence and after appreciating the evidence of the parties, the trial Court granted decree for eviction on both the counts viz. tenant in chief being in arrears of rent for more than six months on the date of service of notice and his failure to pay the same within a month of service of notice. It also found that the premises in suit was illegally sublet to the defendant no.2 by the defendant no.1.

The matter was taken up in appeal by the revisionist. The appeal also failed. Hence this revision.

No one appeared for the landlord respondent no.2. Mr.H.B.Shah appeared for the revisionist and Mr.V.C.Desai appeared for the respondent no.1. Mr.H.B.Shah has raised several contentions to assail the concurrent finding of fact recorded by the two Courts below and he has also referred to English translation of the statement of defendant no.1 and on the basis of this statement and certain observations made by the trial Court contended that the plea of the revisionist that he is licencee is apparently established and in view of this the Court of Small Causes had no jurisdiction to try the suit and that the suit should have been filed in the Civil Court. on

the regular side. The next contention has been that transfer of exclusive possession by the tenant in chief in favour of the revisionist is not established. Hence, it is not a case of either subletting or transfer or assignment in any other manner and in this view of the matter also the suit for eviction on grounds of alleged subtenancy etc. could not be decreed against the revisionist. I have given my anxious consideration to the arguments raised by Mr.H.B.Shah.

The first point for consideration is as to what extent the revisional Court will be inclined to interfere with the concurrent finding of fact. The Supreme Court in latest pronouncement in Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai, 1998(2) GLH 736 has held that the revisional powers are to be exercised only for a limited purpose of correcting a substantial error of law which goes to the root of the decision. It further observed that the High Court cannot substitute its own finding on reappraisal of evidence,, even though different view is possible. This was also a case under section 29(2) of the Bombay Rent Control Act,1947.

This Court in Kusumben wd/o Vasantlal & Others Vs.Shrenikbhai Kasturbhai & Others, 1998(2) GLH 426 also took similar view. In view of the Apex Court's verdict interference by the High Court in revision of this nature can be done only for a limited purpose of correcting errors of law in the judgments of the two Courts below. It has therefore, to be seen whether the judgments and decrees of the Courts below are in accordance with law or not. Finding of fact howsoever erroneous cannot be corrected in revision of this nature. At the same time, it is also difficult to accept the contention that the revisional Court is debarred from perusing the evidence adduced by the parties. Perusal of evidence of the parties is permissible for a limited purpose for satisfying whether it is a case of misreading of evidence or that the finding is based on evidence which is totally inadmissible. To this extent perusal of evidence is possible. Likewise perusal of evidence is possible if conjectural findings have been recorded by the two Courts below, otherwise, normally interference in revision on concurrent findings of fact and law is not permissible.

So far as the question of arrears of rent is concerned, decree on this point has not been challenged by the learned Counsel for the revisionist. If the decree for eviction on this ground is to be confirmed, more particularly, when the tenant in chief has not contested this revision and further in case the

revisionist is found to be subtenant he has to go along with the tenant in chief and his independent rights cannot be entertained at this stage.

The next point for consideration is whether it is a case of license or it is a case of subtenancy or transfer of interest or assignment of rights in tenancy by the tenant in chief in favour of the subtenant. It is admitted case that there is no rent note which was executed between the parties. Mr.Shah has pointed out certain casual observations from the judgment of the trial Court that in the circumstances of the case because the defendant no.2 is a private limited company the rent note must have been executed. However, this is not an observation based upon evidence on record, rather, it is conjectural observation which cannot be given weight in this revision. Unless it is established that rent note was executed no adverse inference can be drawn either against the landlord or against the tenant in chief. The question of drawing adverse inference arises only when existence of a document is proved and the party in possession of such document fails to produce the same during trial. Consequently no adverse inference in the facts and circumstances of the case can be drawn.

Coming to the question of subtenancy or question of licence, learned Counsel for the revisionist has drawn my attention to cross examination of the defendant no.1, wherein he had admitted that the suit premises is in the compound of the plaintiff's theatre. If the gates of the compund are closed nobody can enter inside or go outside. On the basis of this admission Mr.Shah contended that it rules out the possibility of transfer of exclusive possession to the alleged subtenant viz. the revisionist. This aspect was considered at length by the lower appellate Court in para 15 of its judgment and it has rightly observed that the defendant no.1 did not say positively on oath that when gates of cinema compound are closed he is prevented from entering the suit premises. The lower appellate Court rightly found from the cross examination of the revisionist that since he did not state in clear terms that when the gates are closed he is absolutely prohibited from entering the suit premises it could not be a case where exclusive possession was not transferred. The reasonings given by the lower appellate Court are cogent and acceptable. Thus, from the evidence on record also no interference in this revision seems to be required.

For establishing subtenancy, the landlord has to establish two things. The first is transfer of exclusive

possession to the alleged subtenant and the second is that such transfer should be for valuable consideration. Valuable consideration need not necessarily mean cash consideration in the shape of rent. Once transfer of exclusive possession is established the Court can, on the facts and circumstances of the case, draw inference that such transfer was for valuable consideration. Reason for drawing such inference is that it is almost impossible for the landlord to establish by direct evidence payment of rent by subtenant to the tenant in chief in as much as such contract is always secret and the landlord remains unaware of such contract. However, the question of establishing valuable consideration does not arise in the remaining two contingencies as contemplated in section 13 viz. transfer or assignment otherwise.But even in these contingencies the landlord has to prove that exclusive possession of the demised premises was transferred by the tenant in chief to the subtenant.

Mr.V.C.Desai has rightly argued that in this case, on the basis of evidence on record and the circumstances emerging from the evidence on record it is established that it was a case of transfer of exclusive possession and payment of rent by subtenant to the tenant in chief is also established. As referred to above in the pursish, exhibit 20 filed by the tenant in chief he admitted that the revisionist was his subtenant. Mr.Shah has argued that this is collusive transaction between the parties, but rightly the two Courts below have repelled this contention. The revisional Court will be reluctant in substituting its own findings abruptly without any evidence that this transaction was collusive transaction. Admission of the tenant in chief in pursish is best evidence against the maker viz. the defendant no.1 that he had illegally sublet the suit accommodation without consent or permission of the landlord to the revisionist. Admission is the best piece of evidence against its maker unless it is explained to be erroneous or mistaken. Since the tenant in chief did not contest the suit his offering any explanation that his admission was either erroneous or mistaken did not arise. In addition to this the rent receipts were issued in the name of the defendant no.1 who was said to be paying rent to the landlord. There is categorical finding recorded by the two Courts below that the relationship of landlord and tenant between the plaintiff and the defendant no.1 is established and the defendant no.1 committed default in payment of six months rent on the date of service of notice. If this is so, then the question of revisionist being licensee stands ruled out. If the revisionist alleges to be in possession then it is for him not only

to disclose but to establish by cogent evidence in what capacity he is in possession. The payment of rent at the rate of Rs.250/- p.m. by the defendant no.2 to the defendant no.1 is also borne out from the concurrent findings on record. This, therefore, establishes the second ingredient viz. transfer or exclusive possession for valuable consideration. There is also indication from the evidence on record that the revisionist admitted that he is carrying on exclusive business in the demised premises and that the tenant in chief had absolutely no interest in the business. It therefore, implies that the tenant in chief had parted with exclusive possession of the demised premises and he had no control over the business and had lost his interest in the disputed accommodation. This also amounts to transfer of exclusive possession in favour of the revisionist.

In view of the aforesaid discussions, it can be said that the respondent no.1 succeeded in establishing that the defendant no.1 had illegally sublet the suit accommodation to the revisionist in as much as the revisionist was put in exclusive possession of the demised premises for valuable consideration viz on payment of rent @ Rs.250/-p.m.

If this is the net result from the material on record then it is difficult to say that the revisionist was at any point of time licencee of the plaintiff. The contention of Mr.Shah that the defendant no.2 was paying licence fee to the landlord seems to be unacceptable because no documentary evidence has been filed to show that he was paying licence fee to the landlord.

If the theory of licence set up by the revisionist goes then automatically the plea of want of jurisdiction in the small causes Court in a suit of this nature is bound to fail. It is, therefore, held that Small Causes Court had jurisdiction to entertain and try the suit of this nature.

In view of the aforesdaid discussions there is no merit in this revision which is required to be dismissed and is hereby dismissed. No order as to costs.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt